



KENTUCKY REAL ESTATE COMMISSION

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Linda L. Poliskie, Education Director
Lee B. Harris, General Counsel
Shelly Saffran, Administrative Director

Dear Sir or Madam:

At your request, I have enclosed the form used to file a Sworn Formal Complaint against a Real Estate Sales Associate and/or Broker licensed by this Commission. Also enclosed for your information are the following: "Instructions To File A Formal Complaint With The Kentucky Real Estate Commission," "How The Complaint Process Works," "2-Year Filing Deadline Notice," and "Legal Representation Notice."

PLEASE READ THE ENTIRE COMPLAINT PACKET AND INSTRUCTIONS BEFORE COMPLETING THE COMPLAINT FORM AND DAMAGES CLAIMED SHEET.

Please fill out the complaint concisely, including all pertinent facts. Also, please attach copies of any documents you think the Commission should consider. All complaints and attachments must be submitted to this office on 8 1/2 x 11 inch paper. **DO NOT USE STAPLES!** **The Complaint must also be notarized.** If we receive your Complaint and these guidelines are not adhered to, it will be returned to you for compliance.

Please mail the completed, notarized complaint and all attachments to the Commission at the address listed above. Please allow at least thirty (30) days before making any inquiries about your complaint.

Sincerely,

Lee B. Harris
General Counsel

Enclosure

INSTRUCTIONS TO FILE A FORMAL COMPLAINT WITH

THE KENTUCKY REAL ESTATE COMMISSION

To file a formal Complaint with this Commission against a licensee (hereafter referred to as “Respondent”), complete and return the attached Complaint form as outlined below:

1. In order for your Complaint to be legitimate, the alleged violations must fall under KRS 324.160 of our law manual. **It should be noted that the Commission does not have any authority to get money back that you feel is owed to you as a result of a real estate agent’s negligent—as opposed to “fraudulent”—conduct. Nor does it have any authority to compel anyone to take corrective action or to settle any fee or commission disputes. These functions are primarily for the courts.**

The Commission has authority to take disciplinary action against a real estate agent’s license if it is proven that the agent has violated any of Kentucky’s real estate license laws. For violations, the Commission may order one or more of the following sanctions against the agent’s license: revocation, suspension, probation (up to 12 months), fine (not to exceed \$1,000.00), or completion of additional hours of continuing education. It may also issue a formal or informal reprimand. See KRS 324.160(1).

2. When filling out the Complaint form, please state your Complaint fully and concisely. Please attach copies of all relevant documents.
3. Note that your Complaint must be against a licensed Real Estate Sales Associate or Broker, rather than a company or corporation. Specify the name of any Sales Associates or Brokers against whom the Complaint is being made. In order for the Complaint to be also against the Principal Broker, he or she must be specifically named on the cover page and in the Complaint text. Please note that, pursuant to KRS 324.160 (6), a Principal Broker is liable for acts of an associate licensed under him or her only for failing to adequately supervise the licensed affiliate’s activities or having actual knowledge of a violation of an affiliate.

4. After completing the Complaint Form, have your signature notarized by a Notary Public, or it will be returned to you.
5. If your Complaint alleges a prima facie case of violation of the law, the Respondent will be sent a copy of your Complaint and must respond within twenty (20) days. A copy of the response will be sent to you. If the Complaint does not allege a prima facie case of violation of the law, it may be dismissed.
6. Once the response is received, the Complaint and Response will be reviewed by the Commission. If there is enough evidence in the Complaint that a violation may have occurred, it will be assigned to a Commission investigator. This process takes anywhere from two to four months and sometimes longer. There is no way to predict how long the investigation will take.
7. Once we have received the report of investigation, the matter is placed before the full Commission for review. It will either be dismissed or set for a pre-hearing or administrative hearing. If your case is dismissed, you will receive a Final Order in the mail. If you disagree with the decision, you have thirty (30) days from the date of your Final Order to file an appeal in the Circuit Court of the county where you reside.
8. If your Complaint warrants a hearing, you will receive a Notice of Hearing and Charges. This entire process takes approximately six (6) months to one (1) year. This process involves numerous factors and there is no way to calculate a specific time for all cases.
9. Once you have completed the hearing process, your case is again reviewed by the full Commission. A decision will be made and a Final Order will be mailed to you. If you disagree with the decision, you have thirty (30) days from the date of your Final Order to file an appeal in the Circuit Court of the county where you reside.
10. Please be sure to print or type your Complaint. It needs to be legible so that it can be easily read and copied.

11. If your address and/or phone number changes, be sure to notify the Commission immediately.
12. The attached “Damages Claimed” sheet must be completed. If you are not claiming damages, simply write “NONE” on the report. If it is your belief that a licensee of the Commission has engaged in fraudulent conduct and that the alleged fraudulent conduct has caused you to suffer monetary damages, fill out the form completely listing all damages you are seeking to recover, and attach copies of any and all receipts, estimates, etc.
13. The Real Estate Commission promotes the settlement of cases without the necessity of holding an administrative hearing. The Commission may conduct settlement conferences if both the complainant and respondent indicate interest. Please contact the Commission for more information if you are interested in settlement.

HOW THE COMPLAINT PROCESS WORKS

The Commission receives hundreds of consumer Complaints each year. Licensees should be aware of the process by which Complaints are reviewed and processed by the Commission.

1. The Commission receives a consumer Complaint. The Complaint must state facts which, if true, amount to an allegation of illegal activity by the licensee. The legal term for this is “prima facie case.” The legal authority for this standard is KRS 324.151 (1).
2. The Commission sends the consumer Complaint to the licensee. The licensee must respond to the Complaint within twenty (20) days. The licensee must also send a copy of his answer to the consumer.
3. The Commission reviews the Answer and the Complaint. If sufficient allegations are made by the consumer, the Commission orders the case investigated. The Commission investigator interviews all parties and relevant witnesses. Licensees are required to cooperate with Commission investigations (See KRS 324.160(4)(s)). The time required to complete an investigation varies with each case. The complexity of the case, the number of witnesses and the necessity of evidence retrieval all contribute to the length of investigation. Investigations generally take between two (2) and four (4) months or longer.

The Commission may also dismiss the case at this point if the consumer has made insufficient allegations of illegal activity by the licensee.

4. The investigator submits his report to the Commission. The Commission reviews cases at its monthly meetings. If sufficient allegations of a prima facie case are indicated, the Commission orders a hearing in the matter. The complainant in the case will be the Commission only if it appears to the Commission based upon its review that the licensee has not engaged in any fraudulent activity, while committing the alleged violation(s) of licensee law. If, on the other hand, it appears to the Commission that the licensee has not only violated a license law(s), but has also done so by engaging in fraud, then the complainant in the action will be the Commission (represented by a staff attorney) and the consumer(s).
5. The Commission may dismiss a case after reviewing the investigation. The matter is then closed if the consumer does not appeal the dismissal.

If the Commission orders a hearing after reviewing the investigation, a Notice of Hearing and Charges will be sent out.

Many cases before the Commission are also the subject of circuit court actions. Commission cases are often held in abeyance pending the conclusion of the circuit court matter. Attorneys for licensees often are unable to schedule a hearing immediately. This may delay the hearing date.

6. A hearing is held. Hearing Officers preside over hearings. The Commission uses Hearing Officers from the Kentucky Attorney General's Office. The Hearing Officer makes rulings on evidence (much like a judge) and makes a recommendation regarding the facts and legal issues of the case to the Commission (much like a jury).

Exceptions to the Hearing Officer's recommendations may be filed by the parties in a Commission case. Exceptions state where and why a party disagrees with the Hearing Officer's Recommended Order. The Commission reviews the recommendations, exceptions and pleadings in the case. The Order will either find that the licensee is in violation of KRS Chapter 324, dismiss the charges, or send the case back to the Hearing Officer for a partial hearing.

The hearing process can take a number of months. The Hearing Officer has ninety (90) days to prepare his or her Recommendations. Each party has another fifteen (15) days to file exceptions. The Commission will then review the case at its monthly meeting.

Following the Final Order, either party may appeal the Commission's decision. KRS 324.160 (1) lists the possible discipline the Commission may order against a licensee. The possible discipline includes: suspension or revocation of a license, imposition of a fine (not to exceed \$1,000.00), probation (up to twelve (12) months), completion of additional hours of continuing education, and/or the issuance of a formal reprimand.

The Commission must charge and prove that the licensee has committed a license law violation by engaging in fraud, before it can order a Recovery Fund award to a consumer. In Recovery Fund cases, the Commission first allows the licensee an opportunity to pay the consumer. If the licensee fails to pay the consumer, the Commission pays the consumer from its Recovery Fund and suspends or revokes the licensee's license until the amount so ordered (plus interest) is repaid to the Commission's Recovery Fund by the licensee.

2-YEAR FILING DEADLINE NOTICE

All complaints against real estate agents must be filed with the Kentucky Real Estate Commission (“Commission”) within two (2) years. The clock for this 2-year period will start to run either on the date that you have actual knowledge of your possible cause of action or on the date that circumstances should have made you aware of it. *See* 201 KAR 11:190, Section 1(1)(e).

Filing a complaint with the Commission is NOT the same thing as filing a complaint in court. If you decide to also file a complaint in court, you must do so before the court’s filing deadline, and if your purchase contract includes a mediation/arbitration provision to deal with disputes, you must timely seize that opportunity.

Your failure to act in a timely manner could cause you to lose your opportunity to be heard on your cause of action. Don’t let this happen. If you are uncertain about any of your legal rights, you should contact an attorney.

LEGAL REPRESENTATION NOTICE

Please be aware that the Commission's staff attorney may present your evidence at the Commission hearing if you do not have an attorney. However, the Commission's staff attorney does not represent you, nor is he or she your attorney. The Commission's staff attorney represents the Real Estate Commission at the hearing and simply assists you at the hearing with the presentation of your evidence. He or she does not argue your case for you.

If you were to hire an attorney to represent you, your attorney would be required to have ethical duties to you, which the Commission's staff attorney does not have. If you hire a private attorney, your attorney may take depositions, send interrogatories to the other side, and generally do everything in his or her legal power to help you win your case. The Commission's staff attorney does not owe these duties to you. His or her primary duty is to represent the Real Estate Commission.

A private attorney would be available to you for phone consultation, prepare your documents for the hearing, and spend time with you preparing your case and reviewing it with you. You are responsible for preparing your witness list, mailing document copies to present at the hearing, and making requests for subpoenas to the Commission for your Real Estate Commission case.

The Commission attorney will:

- Accept your written questions if you want the Commission's staff attorney to ask questions of witnesses.
- Discuss your case with you over the phone a week or so before the hearing.
- Help you at the hearing with presenting your documents to the Hearing Officer for submission into the record.
- Examine all witnesses called.

You are responsible for the following:

- Meeting any deadlines from the Hearing Officer concerning exchange of witness and document lists.
- Collecting the exhibits you want introduced at the hearing. Even if you have already submitted these documents to the Commission at some time, you must have the documents ready. You also must make copies for all parties before the hearing to distribute at the hearing. You should prepare documents for anything you want the Commission to consider when deciding your case.
- Subpoenaing all witnesses you want to testify. Do not rely on affidavits or written statements. These documents are hearsay and may not be admissible at the hearing.
- Come prepared to present evidence of the damages you have incurred. Once again, do not rely on affidavits, written estimates or invoices. You should subpoena witnesses if you want the Commission to consider evidence from them concerning damages.

IMPORTANT!!

REMEMBER, YOUR CASE IS YOUR RESPONSIBILITY.

It is your responsibility to collect your exhibits and have them ready at the hearing. The Commission's staff attorney can present your evidence if you bring it to the hearing.

PLEASE MEET ALL DEADLINES PROVIDED BY THE HEARING OFFICER.

Your evidence may not be admitted at the hearing if you miss deadlines to provide documents or witness lists. Of course, you may hire a private attorney to represent you for your Commission hearing.

SWORN STATEMENT OF COMPLAINT

Kentucky Real Estate Commission
10200 Linn Station Road, Suite 201
Louisville, KY 40223
(502) 429-7250 or Toll-free 1-888-373-3300

YOUR COMPLAINT MUST BE SUBMITTED ON THIS FORM ONLY.
PLEASE TYPE, USE WORD PROCESSING, OR PRINT LEGIBLY.

Are you a Licensed Real Estate Agent or Broker? Yes _____ No _____

(Full names only, no initials or nicknames)

COMPLAINANT: _____

ADDRESS: _____

CITY: _____ STATE _____ ZIP _____

COUNTY: _____

TELEPHONE: () _____ (Day)
() _____ (Evening)
() _____ (Fax)
() _____ (Cellular)
() _____ (E-mail)

RESPONDENT: _____

ADDRESS: _____

CITY: _____ STATE _____ ZIP _____

COUNTY: _____

RESPONDENT: _____

ADDRESS: _____

CITY: _____ STATE _____ ZIP _____

COUNTY: _____

REAL ESTATE COMPANY: _____

PRINCIPAL BROKER: _____

COMPANY ADDRESS: _____

CITY: _____ STATE _____ ZIP _____

COUNTY: _____

STATE OF KENTUCKY

COUNTY OF _____

I, _____, being first duly sworn, state:

[illegible]

[illegible]

Please give the date you became aware of the problem surrounding this complaint:

_____.

and

Please note whether there was a home inspection conducted on this transaction:

_____.

Signature _____
Complainant

Sworn and Subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission expires _____

Signature _____
Co-Complainant or Spouse

Sworn and Subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission expires _____

****The Following “Damages Claimed” sheet must be attached with this Complaint for proper processing.**

DAMAGES CLAIMED

Please fill out the following blanks, detailing damages that you are claiming in this complaint. If you are not claiming damages, please write "NONE." If you are claiming damages, please list each item separately and include the damage amount for each item. Please attach any and all receipts to this form and include this sheet with the complaint. Please attach any additional sheets as necessary. **Emotional damages, attorney's fees, and pain and suffering are not recoverable at the Kentucky Real Estate Commission.**

| Amount | Item |
|--------|-------|
| _____ | _____ |

Reason: _____

| Amount | Item |
|--------|-------|
| _____ | _____ |

Reason: _____

| Amount | Item |
|--------|-------|
| _____ | _____ |

Reason: _____

| Amount | Item |
|--------|-------|
| _____ | _____ |

Reason: _____

List individuals giving estimates on the above named damages:

Name

Company

Phone Number

Address

()

Name

Company

Phone Number

Address

()

Name

Company

Phone Number

Address

()

Name

Company

Phone Number

Address

()
